

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2016

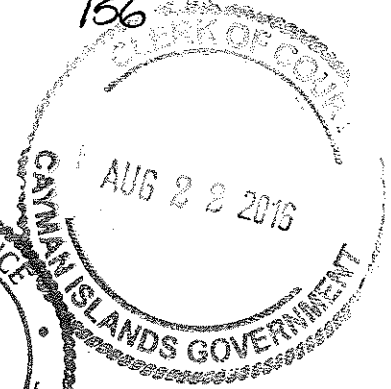
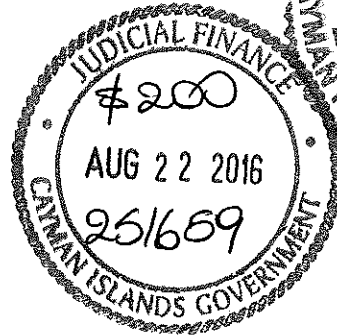
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BETWEEN:

DEISY MOORE

EDLIN MOORE

AND:



THE CAYMAN ISLANDS IMMIGRATION DEPARTMENT

EXPARTE APPLICATION FOR AN INTERLOCUTORY INJUNCTION TO PREVENT THE CAYMAN ISLANDS DEPARTMENT OF IMMIGRATION FROM DEPORTING ADORRE JAMES AND RYNTHIA JAMES UNTIL FURTHER ORDER

An Application is made on behalf of the Petitioners for injunctive relief, to prevent the Cayman Islands Department of Immigration from deporting Adorre James 27th April 2005 (11) and Rynthia James 2nd November 2007 (8). The children have no family in Honduras and have been residing with their mother and step father in Cayman since November 2015, when their last family member in Honduras was no longer able to take care of them.

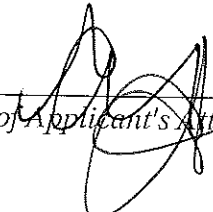
An application is pending before the Immigration Appeals Tribunal, however the Cayman Islands Department of Immigration has refused to allow the children to remain until the determination of the Appeal. They are seeking to have the children removed from the Cayman Islands once the time they have been allowed expires. (TOMORROW)

Further, as there is no one in Honduras to take care of the children and Mother has not lived in Honduras for the last 4 years and has no means of taking care of herself and the children without her husband who is a Caymanian.

CAUSE NO: OF 20__

The Petitioners asks that the court grant injunctive relief in order to prevent the Cayman Islands Immigration department from deporting the children prior to the conclusion of proceedings before the Immigration Appeals Tribunal

Dated this 19 day of August 2016 .


[Signature of Applicant's Attorney]

TO: The Clerk of the Court

AND TO: [CAYMAN ISLANDS IMMIGRATION DEPARTMENT]

TIME ESTIMATE: The estimated length of the hearing of this summons is 30 MINUTES.

IN THE MATTER OF AN APPEAL TO
THE IMMIGRATION APPEAL TRIBUNAL

IN THE MATTER OF THE PROPOSED DEPORTATION OF CHILDREN

ADORRE DIANA JAMES

RYNTHIA EREN BROOKS JAMES

BETWEEN

THE CAYMAN ISLANDS IMMIGRATION AUTHORITY

AND

EDLIN MOORE & DEISY MOORE

Appeal against the decision not to grant the Children of the family the right to remain
with their parents on the basis of sufficiency of funds

Mr and Edlin Mrs Moore seek to appeal against the deportation of the children of their family Adorre James and Rynthia James. Both children are children of the family but are not the biological children of Mr Edlin Moore. They were born to Ms Deisy Moore, prior to her marriage with Mr Edlin Moore. Until 2015 both children lived in Honduras, they are Honduran by birth. However, they came to the Cayman Islands to stay with their mother and

step-father after they were abandoned and abused by the people charged with caring for them, who also did not feed them and refused to send them to school. This was unknown to Mrs Moore who had been living with her husband in the Cayman Islands.

The Children's arrival within the jurisdiction was initially temporary but necessary, as the children were being abused, mistreated and not cared for by their supervisors. There was and is no other family within Honduras to look after the children.

Since the children have been residing with their parents in Grand Cayman, there has been no financial difficulty. In order to maximise the disposable income, the family have pooled together, with Mr Moore and his young family moving back home with his parents to avoid the need to pay rent. Moreover, they contribute to some of the bills and some of the food. Whilst there is a disposable income available to the family, it is hoped that by living frugally the family will demonstrate to the Immigration Tribunal the family's ability to raise and nurture 2 children on the income disclosed, which is an income is sufficient enough to ensure that the family do not have to resort to the Government of the Cayman Islands for any financial assistance. There is also significant help from an extended and close knit family who are supportive and if the need arises are there to offer emotional and financial support to the family.

The application.

An application was made by the Parents for the children be allowed to remain with them on Grand Cayman. It was made on the basis that there was no suitable person with whom the children could live in Honduras. Further, there was no family available to look after the children and their only living family, their mother was in Grand Cayman. The application was submitted by Mr and Mrs Moore. However, the application was refused. The refusal is dated 12th May although it was not received by the parties until sometime later.

On the basis of the letter of 12th May 2016 the Caymanian Status and Permanent Residency Board (the Board) refused the application made by the parents under S31(3) (f) of the Immigration Law 2015 Revision, to allow the children to remain with their parents in the Cayman Islands on the basis that the family did not have a sufficient salary to maintain the children whilst on island. S31 (3)(f) reads as follows:-

31. (1) The spouse of a Caymanian may apply to the Chief Immigration Officer or the Caymanian Status and Permanent Residency Board for permission to reside in the Islands and if such application is successful the Chief Immigration Officer or the Board, as the case may be, shall grant to the applicant a Residency and Employment Rights Certificate for a period of seven years and such Certificate when granted may, upon application, be renewed at the discretion of the Chief Immigration Officer or the Board.

(3) The Chief Immigration Officer or the Board shall take into account the following, namely that-

- (a) the spouse of the applicant is Caymanian;
- (b) the marriage is not a marriage of convenience;
- (c) the applicant is of good character;
- (d) the applicant is in good health as evidenced by a recent medical certificate;
- (e) the marriage is stable; and
- (f) the applicant and his spouse have sufficient financial means to support himself and his dependants listed on the application as accompanying him.

In carrying out the requirements as set out, the Board has a policy that there has to be a combined salary of \$3,500 with an additional \$1000 per month for each dependant. It is noted that this is a policy and not a legal requirement set down in any primary legislation.

In an email dated the 21st June 2016 the Immigration Appeals Tribunal Chairman requested further submissions in order to determine this appeal.

This response dated the 16th July, sets out the grounds which set out why that decision is flawed, the action of the Immigration officer unlawful and importantly it explains why the application was not properly determined, having regards to all aspects of the relevant legislation.

Grounds of Appeal

- The Board failed to determine the appeal with any reference to the Cayman Islands Constitutional order 2009.
- Particularly, in refusing the application, the reasons set out failed to properly take into consideration the Constitutional right to a family life under the Cayman Islands Constitutional Order 2009.
- Moreover, the board has issued a blanket, one size fits all policy which can at best be described as discriminatory when determining this application. Therefore the application was not viewed on the merits of the application itself. It is further submitted that such a blanket policy is Wednsebury unreasonable.
- The said policy falls foul of the Cayman Islands Constitution in that it will automatically disproportionately discriminatory against those who come to work within the Cayman Islands from predominately non white jurisdictions in addition the policy disproportionately effects those who are deemed to be from a lower social origin and because they may have less by way of property.

The relevant sections of the Cayman Islands Constitutional Order 2009

Existing laws

5.—(1) Subject to this section, the existing laws shall have effect on and after the appointed day as if they had been made in pursuance of the Constitution and shall be read and construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

(2) The Legislature may by law make such amendments to any existing law as appear to it to be necessary or expedient for bringing that law into conformity with the Constitution or otherwise for giving effect to the Constitution; and any existing law shall have effect accordingly from such day, not being earlier than the appointed day, as may be specified in the law made by the Legislature.

(3) In this section “existing laws” means laws and instruments (other than Acts of Parliament of the United Kingdom and instruments made under them) having effect as part of the law of the Cayman Islands immediately before the appointed day.

Existing offices and officers

6.—(1) Any office (except that of Chief Secretary) established by or under the former Constitution and existing immediately before the appointed day shall on and after that day, so far as is consistent with the Constitution, continue as if it had been established by or under the Constitution.

(2) Any person who immediately before the appointed day holds or is acting in any office continued by virtue of subsection (1) shall, on and after that day, continue to hold or act in that office as if he or she had been appointed to hold or act in it in accordance with or under the Constitution.

(3) Any person to whom subsection (2) applies who, before the appointed day, has made any oath required to be made before assuming the functions of his or her office shall be deemed to have made any like oath so required by the Constitution or any other law.

The above 2 sections are applicable to all government, it essentially can be interpreted as all applications of law must be made in accordance with the Constitution.

Part 1 of the Constitution makes reference to the Bill of Rights freedoms and responsibilities. Again, created responsibilities of governments and the government departments which exist.

Lawful administrative action

19.—(1) All decisions and acts of public officials must be lawful, rational, proportionate and procedurally fair.

(2) Every person whose interests have been adversely affected by such a decision or act has the right to request and be given written reasons for that decision or act.

In the determination of the application by the family no reference is made to s19(1) in the decision of the board on 12th May 2016. Importantly, the right to a family life is not at all considered in any determination made by the determining officer of the Board. It is all the more concerning that in its dealings with Mr and Mrs Moore have directly threatened to forcibly remove the children from their parents and if necessary remove Mrs Moore with them to resolve the problem of the children remaining in the Cayman Islands or living without a parent in Honduras. In doing so the Board, failed to consider any rights of any family member under Part 1 section 19(1) of the Constitutional Order 2009.

Moreover in making such threats the Immigration officers have disclosed that they are willing to act in a matter which is not only Wednesbury Unreasonable but also is in direct

contravention to the rights afforded to the family under the Cayman Islands Constitutional order 2009.

Non-discrimination

16.—(1) Subject to subsections (3), (4), (5) and (6), government shall not treat any person in a discriminatory manner in respect of the rights under this Part of the Constitution.

(2) In this section, “discriminatory” means affording different and unjustifiable treatment to different persons on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, age, mental or physical disability, property, birth or other status.

(3) No law or decision of any public official shall contravene this section if it has an objective and reasonable justification and is reasonably proportionate to its aim in the interests of defence, public safety, public order, public morality or public health.

(4) Subsection (1) shall not apply to any law so far as that law makes provision—

(b) with respect to the entry into or exclusion from, or the employment, engaging in any business or profession, movement or residence within, the Cayman Islands of persons who are not Caymanian;

(c) for the application, in the case of persons of any such description of grounds as is mentioned in subsection (2) (or of persons connected with such persons), of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters that is the personal law applicable to persons of that description;

under part 1 section 16, non discrimination is an important consideration. Section 16 (2) of that section prevents such discrimination. However, S16 (4)(1)(b) provides a rider to that cannot do so on the basis of national and social origin, property brith or other status. However, it is submitted that S16(4)(1) must be read in conjunction with S24. In addition there are

extensive authorities which clearly show how that section should be interpreted and the competing interests which are relevant to the consideration of the issues in this application.

The Immigration Appeals Tribunal is asked to have regard to the authorities attached to this document.

Protection of children

17.—(1) In addition to the provisions of this Part which afford protection to children, the Legislature shall enact laws to provide every child and young person under the age of eighteen (referred to in this section as a “child”) with such facilities as would aid their growth and development, and to ensure that every child has the right—

- (a) to a name from birth;
- (b) to family care or parental care, or to appropriate alternative care when removed from the family environment;
- (c) to basic nutrition, shelter, basic health care services and social services;
- (d) to be protected from maltreatment, neglect, abuse or degradation;
- (e) to be protected from exploitative labour practices;
- (f) not to be required or permitted to perform work or provide services that
 - (i) are inappropriate for a child of that age; or
 - (ii) place at risk the child’s well-being, education, physical or mental health or spiritual, moral or social development;
- (g) not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 5 and 22, the child may be detained only for the shortest appropriate period of time, and shall be treated in a manner and kept in conditions that take account of his or her age;

- (h) to have a legal practitioner assigned to the child by the Government, and at public expense, in civil proceedings affecting the child, if substantial injustice would result; and
- (i) not to be used directly in armed conflict, and to be protected in times of armed conflict.

(2) In implementing subsection (1), the Legislature shall proceed on the basis that a child's best interests are of paramount importance in every matter concerning the child.

Under part 1 s17 the protection of children, and their welfare is paramount. The Immigration Appeals Tribunal have a duty towards the children of the marriage. There is a competing interest between s17 of the Cayman Islands Constitutional order and s31(3) of the Immigration Law 2015 Revision, however, all other legislation is subordinate to the Constitutional order and therefore it is submitted that it has to be interpreted in line with the superior legislation. Any failure to do so would be a breach of the rights available to the Moore family under the constitution.

Under Part 1 s 24 of the Constitutional Order 2009, It is unlawful for a public official to make a decision or to act in a way that is incompatible with the Bill of rights unless the specific public official is require or authorised to do so by primary legislation.

There is a rider in this section which allow for discrimination based upon s31 (3) (f) of the Immigration law, in that an immigration officer is permitted under the primary legislation to determine an application based upon all the circumstances available to an applicant. The wording is important, in that the determining officer or the Board is allowed to take it into account a number of other considerations. However, it is notable that the primary legislation does not specify the amount of money which constitutes a sufficient funds.

Importantly in the legislation not specifying the amount that constitutes sufficient funds and therefore not providing a single determinative 'sufficient funds' figure there can be no blanket

policy in relation to the minimum amount which would constitute sufficient funds. The legislation by its silence recognises that sufficient funds will be based upon all the circumstances and not simply a blanket policy. Had it been the intention of the Legislative Assembly to include a specific figure it is submitted that it would have been placed within the primary legislation. Such a figure is not mentioned in the Primary legislation, it simply is not there, which means that any assessment of any amount is discretionary and should therefore be based upon the merits of the case as opposed to the broad brush policy of the Board or the determining officer. It is therefore submitted that the Board ought to have considered the actual circumstances of the individual application and assess it accordingly. Failure to do so would be unlawful as it would be in direct contravention of S24 (supra) and importantly it would also amount to the Board exercising its discretion in flagrant disregard of all of the aforementioned sections of the Cayman Islands Constitutional Order 2009.

Importantly to exercise a discretion on the basis of unwavering policy, no longer makes it a discretion as provided for in S31 Immigration Law 2015 revision, but it then makes it an unwritten rule which is discriminatory in nature. It would also make any decision base upon that unwritten rule, *Wednesbury* unreasonable as no case would be decided on its actual merits. It is notable in this instance that there was no mention of any of the other criteria which was due for consideration when determining an application before the board. Therefore it is arguable that the Board sought to find any reason to dismiss this application and failed to properly consider all other elements of the relevant section which were in the Appellants favour.

The Tribunal is respectfully asked to exercised its discretion in considering the application before it. It is asked to consider the additional submissions provided on behalf of the Appellant in this case. In addition the Tribunal is asked to find that the method of determining the appeal was discriminatory and incompatible with the rights of the Appellant under the legislation cited above.

The Immigration Appeals Tribunal is respectfully asked to grant the Application on behalf of Mr and Mrs Moore to allow the children of the family to remain with them in Grand Cayman.

Amelia Fosuhene

Brady Attorney At law

On behalf of Mr and Mrs Moore

16th July 2016